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OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 27, 2004

Case Number: TSO-0080

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A Department of Energy Operations Office (DOE Operations Office) suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be granted. As set forth below, it is my decision that the individual's access authorization should be granted.

I. Background

The individual has been employed by a contractor at a DOE facility since December 2001. After his hiring, his employer requested access authorization for the individual. In June 2002, the individual participated in a personnel security interview (PSI) and reported to DOE security that he had been arrested for Boating Under the Influence (BUI) in 2000. Ten days after the PSI, he was arrested again for BUI. In November 2002, a DOE consultant-psychiatrist diagnosed the individual as alcohol dependent. In September 2003, DOE notified the individual that it had received derogatory information that created a doubt regarding his eligibility for access authorization, and informed him how to proceed to resolve the information that created the security concern. Notification Letter (September 18, 2003).

The Notification Letter stated that the derogatory information regarding the individual falls within 10 C.F.R. § 710.8 (h), (j) and (l) (Criteria H, J and L). The DOE Operations Office invoked Criterion H on the basis of information that the individual has an illness or mental condition of a nature which causes, or may cause, a significant defect in his judgment or reliability. The DOE Operations Office invoked Criterion J on the basis of information that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. In this regard, the Notification Letter states that a DOE consultant-psychiatrist diagnosed the individual as

alcohol dependent without adequate evidence of rehabilitation or reformation, and that the psychiatrist concluded that the alcohol dependence is a mental condition which causes a significant defect in his judgment or reliability. Criterion L is invoked when a person has allegedly engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. The DOE Operations Office invoked Criterion L based on the two alcohol-related arrests.

In a letter to DOE Personnel Security, the individual, through his attorney, exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On January 27, 2004, I was appointed as Hearing Officer in this case. After conferring with the individual's attorney and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE consultant-psychiatrist (DOE psychiatrist) testified on behalf of the agency. The individual testified on his own behalf and also elected to call a substance abuse counselor as a witness. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." Documents that were submitted by the individual during this proceeding are also exhibits to the hearing transcript and shall be cited as "Indiv. Ex."

II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th. Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion

that the individual's access authorization should be granted because I conclude that such approval would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

The individual used marijuana from 1987 to 1998. Ex. 4-1(PSI) at 33. From 1992 to 1998, he used marijuana daily most days, and sometimes two or three times a day on weekends. *Id.* at 33-34. He also used prescription drugs illegally two or three times and used cocaine five or six times between 1993 and 1997. *Id.* at 31-32, 44-46; Ex. 1-5. In March 1998, he was injured on the job and taken to the hospital where he tested positive for marijuana in a urine test. *Id.* at 20-21. In May 1998, he tested positive for marijuana again and his employer required him to attend a drug treatment program in order to keep his job. *Id.* at 23-25. He attended a local outpatient treatment program for one month. *Id.* at 25-27; Ex. 2-2. The individual stopped using marijuana in July 1998. *Id.* at 33. In July 2000, the individual was driving his boat at a local lake and was arrested for BUI and Reckless Operation after colliding with another boat. Ex. 3-1. He broke his jaw and was knocked unconscious. PSI at 6. He was sentenced to jail time and a fine, his boating privileges and license were suspended for one year, and he was ordered to attend DUI school. Ex. 3-1; PSI at 8-9. Jail time was later suspended based on good behavior and payment of the fine. Ex. 3-1; PSI at 8.

The individual began working at the DOE facility in December 2001. His employer requested a security clearance and the individual filled out a Questionnaire for National Security Positions (QNSP) in December 2001. PSI at 5. He did not list his previous cocaine use on his QNSP because he did not want his wife, who had helped him to prepare the documents, to know that he had used cocaine. *Id.* at 39. On June 5, 2002, the individual participated in a PSI and advised DOE of his BUI arrest in 2000. PSI at 5-7. He also signed a drug certification and informed DOE that he intended to drink "responsibly" in the future. PSI at 19, 50. However, on June 15, 2002, he was again arrested for BUI. Ex. 2-1 at 2. He refused a breath test. *Id.* In September 2002, the individual was evaluated by a DOE psychiatrist, who diagnosed the individual as alcohol dependent currently and marijuana dependent in the past. Ex. 2-1 (Report). The psychiatrist found no evidence of rehabilitation or reformation from the alcohol dependence, which he also opined had caused a significant defect in the individual's judgment and reliability. *Id.* at 5. In order to show reformation, the psychiatrist wrote that the individual must "recognize that he has chemical dependency problems" and "be evaluated and treated by a recognized center." *Id.* In September 2003, the DOE issued a Notification Letter to the individual advising him of his procedural rights in the resolution of his eligibility for a security clearance. The individual requested a hearing on October 14, 2003.

B. DOE's Security Concern

The excessive use of alcohol raises a security concern because of its intoxicating effect. "Because the use of alcohol at the very least has the potential to impair a user's judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases." *Personnel Security Review*, OHA Case No. VSO-0417, 28 DOE ¶ 82,798 (2001), quoting *Personnel Security Review*, OHA Case No. VSA-0281, 27 DOE ¶ 83,030 at 86,644 (2000). The alcohol had the effect of impairing the individual's judgment such that he operated a motor vehicle while intoxicated, violated the law, and was arrested. In this case, the alcohol intoxication caused the individual to exhibit unusual conduct that led to multiple alcohol-related arrests. Therefore, DOE's security concerns are valid and the agency has properly invoked Criteria H, J, and L in this case.

C. Hearing Testimony

1. The DOE Psychiatrist

The DOE psychiatrist testified at the beginning of the hearing about his two hour evaluation of the individual that took place in September 2002. Tr. at 17-41. Prior to the evaluation, the psychiatrist read the individual's PSI and was concerned by some of the individual's comments about his drug and alcohol use. *Id.* at 17-18. The individual told the psychiatrist that he had been drinking 20 to 30 beers a month, mostly on the weekends. *Id.* at 21. He did not try to get intoxicated and did not feel the alcohol very much. *Id.* The psychiatrist believed the individual's statement that he was no longer using marijuana. *Id.* During the interview, the individual admitted that he had been arrested only a few days after the PSI for his second BUI offense. *Id.* at 22. The individual told the psychiatrist that he had been a heavy drinker earlier in life, that he sometimes became intoxicated unintentionally, and that he had never tried to quit because he did not see his drinking as a problem. *Id.* at 23.

The psychiatrist concluded that the individual met many of the criteria for alcohol dependence, and had a history of marijuana dependence. *Id.* at 18. However, the psychiatrist was especially troubled that the individual did not recognize that he had a drinking problem. *Id.* at 40. The individual exhibited a high tolerance for alcohol. *Id.* at 22-24. He also showed poor judgment by continuing to drink under the same circumstances that led to his first arrest (i.e., boating on the weekend), and often drinking more than he had planned. *Id.* The doctor concluded that the individual exhibited an ongoing pattern of excessive drinking and met most of the criteria for alcohol dependence. *Id.* at 25.

2. The Substance Abuse Counselor

As evidence of rehabilitation and reformation, the individual presented the testimony of his substance abuse counselor. Tr. at 43, 66. The individual was referred to the counselor by his attorney and began seeing the counselor in December 2002. Tr. at 44-45; Indiv. Ex. 1. The counselor performed an initial assessment of the individual and agreed with the

psychiatrist's diagnosis of the individual as alcohol dependent. *Id.* at 46. He also began to administer random drug screens to the individual. *Id.* at 47. The counselor referred the individual to Alcoholics Anonymous (AA). *Id.* at 47-48. When the individual expressed discomfort with AA, he then referred the individual to a church program, and the individual has been attending that program for three months prior to the hearing. *Id.* at 48. According to the counselor, the individual now abstains from alcohol, avoids the places where he used to drink and the friends that he drank with, and attends church with his wife. *Id.* at 49. During weekly sessions, the counselor talks to the individual about his family. *Id.* at 59-60. The individual now has a better relationship with his wife, who is supportive of his recovery. *Id.* at 64. All of the drug screens have been negative. *Id.* at 47. The counselor testified that the individual has changed his attitude toward drinking. *Id.* at 59-60. The counselor advised the individual to avoid interactions with other drinkers for one to two years (from the date of the hearing) and make others aware that he is abstaining. *Id.* at 63. He considers the individual to be honest, reliable, and trustworthy. *Id.* at 65. According to the counselor, the individual's prognosis is favorable as long as the individual continues a lifestyle of recovery, support groups, and abstinence. *Id.* at 61. The counselor also testified that the individual has relapsed twice – in September 2003 and in May 2004. *Id.* at 66.

3. The Individual

The individual testified at the hearing that his sessions with the counselor have helped him to acknowledge his alcohol dependence. *Tr.* at 68. His family is supportive of his efforts to abstain. *Id.* His wife is happy with his progress, and their relationship improved when he stopped drinking. *Id.* at 69. The counselor has helped the individual to understand that he had been rationalizing his behavior and making excuses for his drinking. *Id.* at 70. The individual began attending a church-based recovery program once a week for three months, and attended six or seven sessions of AA prior to the church program. *Id.* at 71-72. The individual testified that he has not used drugs and intends to continue counseling. *Id.* at 72-74. He understands that his recovery is ongoing, and declared that his friends know that he is abstaining. *Id.* at 76-77. As an example, he testified that he previously went to the lake two to three times per week, and that is where the majority of his drinking (and arrests) occurred. *Id.* The individual testified that he now avoids activities that involve alcohol, he no longer owns his boat, and he does not go to the lake. *Id.* at 74-75. His Bible-based recovery program reviews the Biblical equivalents of the AA Twelve Step Program, although he does not yet have a sponsor. *Id.* at 71, 79-81, 85.

The individual admitted to two relapses. *Tr.* at 72. He stopped drinking in December 2002, but he had a relapse in September 2003, while on vacation with his wife, and again in May 2004, while visiting a friend on his way home from work. *Tr.* at 77-78. The individual testified that he immediately reported both relapses to his counselor and that he discussed the relapses with his support group. *Id.* at 72-73.

As for the issue of omitting his cocaine use from the QNSP, the individual testified that his wife had helped him complete the paperwork for his security clearance. *Tr.* at 82-83. He did not list his drug use in the QNSP because he wanted to hide that activity from his wife. *Id.* However, he did not intend to hide it from DOE and actually informed a DOE employee

about the omission when he returned the completed forms to DOE. *Id.* at 83. The employee then advised him to tell the interviewer about his drug use during his PSI, and he did. *Id.* Sometime later he also told his wife about his drug use. *Id.* at 84.

D. Evidence of Rehabilitation and Reformation

At the conclusion of the hearing, the DOE counsel asked the psychiatrist if he had heard additional evidence at the hearing that would change his opinion regarding the individual's reformation and rehabilitation. The DOE psychiatrist answered:

"Yes, I think that it is clear that the situation is different in terms of attitude and in terms of action and that the recovery and rehabilitation process is occurring. . . . There have been changes in lifestyle, changes in attitude, major changes in lifestyle, it looks like. . . . And that certainly seems to be producing good results as well."

Tr. at 86. The psychiatrist did not change his opinion when reminded of the individual's two relapses, instead testifying that "[t]hey are pretty typical for this stage of recovery and rehabilitation." *Id.* The psychiatrist explained that the individual's attendance at a minimal number of AA meetings and three months of the Christian recovery program are inadequate by themselves as evidence of rehabilitation and reformation. *Id.* at 87. However, he opined that attendance in the support group combined with (1) the individual's ongoing relationship with a substance abuse counselor, (2) maintaining a new lifestyle, and (3) a history of clear drug screens, are all signs of the rehabilitation process. *Id.* at 88.

Even though the individual is not attending AA, the psychiatrist concluded that the church-based recovery program is a better "fit" for the individual than AA. *Id.* at 86. According to the psychiatrist, a key feature of recovery is honest self-assessment. *Id.* at 87. He stated at the hearing that "an unvarying pattern of honest reporting is an excellent prognostic sign for complete abstinence as one of the goals, clinical goals at least, of recovery." *Id.* at 87.

The psychiatrist testified that the individual's prognosis is based on how he would handle a relapse, and he concluded after hearing the new evidence that the individual's handling of a relapse would be "excellent." *Id.* at 89-90. According to the psychiatrist, the individual's pattern of honesty and self-examination "continues to close doors on future relapse issues." *Id.* at 89.

In a Part 708 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. *See Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). In this case, both mental health professionals persuasively testified that the individual had presented adequate evidence of rehabilitation from the diagnosis of Alcohol Dependence, and that he did not have a significant defect in his judgment or reliability. Thus, I find that the individual has mitigated the security concerns of Criteria H and J. As regards Criterion L, the two arrests at issue occurred while the individual was under the influence of alcohol. Our cases require that an individual demonstrate rehabilitation or reformation from an alcohol problem in order to mitigate the concerns raised by alcohol-related arrests. *See Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). As discussed above, the

individual has demonstrated the requisite degree of rehabilitation. Therefore, I further find that the individual has mitigated the Criterion L security concerns.

II. Conclusion

As explained in this Decision, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (h) , (j) and (l) in suspending the individual's access authorization. The individual has, however, presented adequate mitigating factors, set forth above, that alleviate the legitimate security concerns of the DOE Operations Office. In view of these criteria and the record before me, I find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be granted.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: October 26, 2004